

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 22, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1535

Cir. Ct. No. 2010FA176

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE MARRIAGE OF:

STACY L. GREGERSON,

PETITIONER-RESPONDENT,

V.

KYLE D. GREGERSON,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

¶1 STARK, J.¹ Kyle Gregerson, pro se, appeals an order imposing a remedial sanction for failing to comply with the purge condition of a 2011

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

contempt order. Kyle was found in contempt for failing to make required maintenance payments pursuant to a divorce judgment.² On appeal, Kyle argues he cannot afford to make the maintenance payments and, as a result, the circuit court erred by holding him in contempt. He also objects to the underlying divorce judgment and argues the circuit court improperly classified debt payments as maintenance. We affirm.

BACKGROUND

¶2 Kyle and Stacy Gregerson divorced in 2011. As part of the divorce judgment, the circuit court held open Kyle's obligation to pay maintenance to Stacy. The court's judgment, dated April 6, 2011, provided, in part:

If [Kyle] fails to pay the debts to Westconsin Credit Union³ as identified in the Division of Debt paragraph (21) below and hold [Stacy] harmless from any liability thereon; [Stacy] shall have the right to proceed against [Kyle] for an amount of maintenance equal to the amount for which she paid on said debt plus any income tax attributable to the amount she recovers from [Kyle] being treated as taxable maintenance by the taxing authorities. Except for maintenance being held open for this limited purpose, maintenance to [Stacy] is waived and denied by this Court.

¶3 On July 13, 2011, Stacy, pro se, filed an order to show cause and an affidavit for finding of contempt. She averred Kyle had not made any payments on the Westconsin Credit Union debts.

² Because the parties share the same last name, we will refer to the parties by their first names for clarity.

³ It appears from the record the purpose of the Westconsin Credit Union debts was to fund Kyle's business. Stacy's parents co-signed the loans. The notes were secured by a lien against Stacy's parents' house.

¶4 At the order to show cause hearing on August 31, 2011, Kyle conceded he was ordered to make payments on the Westconsin Credit Union debts and had not made any payments. Kyle testified he could not make payments because he was self-employed and making only \$900 per month. The court continued the hearing to give Kyle time to seek other employment so that he could make the payments.

¶5 The record contains no transcript from the next hearing on November 9, 2011. However, the court's order following that hearing states the court found Kyle in contempt and ordered ninety days' jail, to be suspended for two years, as a remedial sanction for violating the court's divorce judgment. Throughout 2012 and 2013, the court held various review hearings on the status of Kyle's payments.

¶6 Following a hearing on June 10, 2013, the court entered a written order that stated Kyle had consistently failed to make the payments since the court found him in contempt in November 2011. As a result, the court ordered Kyle "to report to the Dunn County Jail [on] August 1, 2013, if \$500.00 per month maintenance payments are not made."

DISCUSSION

¶7 Kyle appeals the court's written order following the June 10, 2013 hearing. He argues the court erred by finding him in contempt because he did not *intentionally* fail to make the maintenance payments. He contends he attempted to make the payments, but simply could not afford them.

¶8 At the outset, we note Kyle did not appeal the court's 2011 contempt order. A timely filing of a notice of appeal is necessary to give us subject matter

jurisdiction over an appeal. WIS. STAT. RULE 809.10(1)(e); *State v. Sorenson*, 2000 WI 43, ¶13, 234 Wis. 2d 648, 611 N.W.2d 240. Because Kyle never filed a timely notice of appeal from the contempt order, we have no jurisdiction to review Kyle's objections to the court's 2011 contempt order. *See id.*

¶9 Kyle's appeal encompasses only the order imposing a remedial sanction for his failure to comply with the purge condition from the 2011 contempt order. Kyle appears to argue the court erred by imposing the remedial sanction because he did not intentionally fail to comply with his purge condition that he make maintenance payments. However, Kyle has failed to provide us with a transcript from the June 10 hearing. When an appeal is brought, the scope of our review is necessarily confined to the record before us. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). In the absence of a transcript, we must assume that every fact essential to sustain the circuit court's decision is supported by the record. *See id.* Accordingly, we must assume the record supports the circuit court's determination that Kyle intentionally failed to make the payments.

¶10 Kyle next argues the court cannot imprison him for failing to make payments because art. I, § 16 of the Wisconsin Constitution provides: "No person shall be imprisoned for debt arising out of or founded on a contract, expressed or implied." Kyle, however, is not facing imprisonment for simply failing to pay a debt. The court found Kyle in contempt for disobeying its divorce judgment and ordered jail as a remedial sanction to force Kyle into compliance with its judgment. *See* WIS. STAT. § 785.01(1)(b), (3). Any imprisonment Kyle faces stems from his continued refusal to comply with the court's divorce judgment.

¶11 Kyle also argues the court's order that he make payments of \$500 per month violates his constitutional right under art. I, § 17 of the Wisconsin Constitution. That section provides, "The privilege of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws[.]" *Id.* However, because we have no transcript from the June 10 hearing, we must assume the court found Kyle has the ability to make the payments and is intentionally refusing to comply. *See Austin*, 86 Wis. 2d at 641. Accordingly, Kyle has not shown how the court's order violates his right under art. I, § 17.

¶12 Finally, Kyle objects to the original divorce judgment. He argues maintenance should not have been tied to the Westconsin Credit Union debts.

¶13 The divorce judgment was entered in April 2011 and was not appealed. As stated previously, a timely filing of a notice of appeal is necessary to give us subject matter jurisdiction over an appeal. WIS. STAT. RULE 809.10(1)(e); *Sorenson*, 234 Wis. 2d 648, ¶13. Because Kyle failed to file a timely notice of appeal from the original divorce judgment, we have no jurisdiction to review Kyle's objections to that judgment. *See id.*

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

